Supreme Court, U. S.
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No. 79-1455

In the Supreme Court of the United States

OCTOBER TERM, 1979

ALEXANDER KULIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The judgment order of the court of appeals (Pet. App. B) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1979. A petition for rehearing was denied on February 14, 1980. The petition for a writ of certiorari was filed on March 17, 1980, and is therefore out of time under Rule 22(2) of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the affidavit underlying a warrant to search petitioner's pickup truck was sufficient to support a finding of probable cause.

2. Whether police officers could lawfully enter petitioner's home under the authority of a warrant to arrest his fugitive wife.

STATEMENT

Following a jury-waived trial on stipulated facts in the United States District Court for the Southern District of California, petitioner was convicted of possession of heroin with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to four years' imprisonment to be followed by ten years' special parole. The court of appeals affirmed (Pet. App. B).

Prior to trial, the district court denied petitioner's motion to suppress evidence, including 13 ounces of heroin seized from petitioner's pickup truck by police officers executing a warrant to search petitioner's apartment and truck for narcotics and for evidence of a murder-for-hire plot. The warrant was issued on the basis of facts alleged in a nine-page affidavit of police officer Lee Roberts.

The affidavit disclosed that Steven Bovan was found dead of gunshot wounds in October 1977, and petitioner and his wife, Elsie Kulik, were indicted in Orange County, California, for conspiracy to commit the murder. Petitioner and his wife were alleged to have hired four men to murder Bovan for a fee of $25,000. The murder was to avenge petitioner's kidnapping by Bovan and others in August 1977. Petitioner and his wife had met with the four gunmen at the offices of Prasadam Distributing, Inc. to discuss the plans for Bovan's murder. The conversations regarding the murder scheme were

believed to have been recorded, but the police could not find the tapes during a search of the offices and believed that the tapes had been removed by petitioner (Affidavit 6-8).

The affidavit also stated that, following the indictment of petitioner and his wife for the murder conspiracy, warrants were issued for their arrests. Petitioner was arrested and released on bond, but his wife remained at large as a fugitive. On December 14, 1977, after observing Mrs. Kulik inside an apartment in Carlsbad, California, local police officers knocked on the door of the apartment to execute the outstanding arrest warrant. Petitioner answered the door and stated that his wife was not there. The police commenced a search of the three story apartment for Mrs. Kulik (Affidavit 2-3).

On the first floor of the apartment Officer Roberts observed two boxes labeled with the initials "PDI," which he recognized as those of Prasadam Distributing, Inc., the company at which the conversations about Bovan's murder had taken place. On the second floor, the officers found in plain view a small quantity of marijuana on a coffee table. While searching for Mrs. Kulik on the third floor, the officers found a semi-automatic rifle and the cylinder portion of a hypodermic syringe. They also discovered petitioner's wife hiding in an underground maintenance crawl hole and arrested her (Affidavit 3, 5-6).

Petitioner was arrested for harboring a fugitive. A search of petitioner incident to his arrest disclosed fictitious identification documents in the name of Albert Helms. Petitioner had recently been seen driving his pickup truck, which, according to state motor vehicle records, was registered to "Albert Helms" (Affidavit 2, 8). The affidavit also revealed that petitioner had been

arrested, in October 1977, for possession with intent to sell more than one pound of high quality heroin (Affidavit 4-5).

On the basis of the information in the affidavit, a state judge issued a warrant to search petitioner's apartment and pickup truck for evidence of the murder conspiracy and for controlled substances.

ARGUMENT

1. Petitioner apparently concedes that there was probable cause to believe that he was involved in several crimes, including conspiracy to commit murder and possession of controlled substances. His contention (Pet. 12-18) is that there was no reason to believe that his pickup truck contained evidence of those crimes. It is true that the affidavit did not contain any eyewitness accounts of individuals who had observed the evidence inside petitioner's truck. Under the Fourth Amendment, however, the nexus between the items to be seized and the place to be searched need not rest on direct observation, but may be based on such factors as the type of crime under investigation, the nature of the items to be seized, and normal inferences as to where such items would be kept. See, *e.g.*, *United States* v. *Burgard*, 551 F. 2d 190, 192-193 (8th Cir. 1977); *United States* v. *Rahn*, 511 F. 2d 290, 293-294 (10th Cir.), cert. denied, 423 U.S. 825 (1975); *United States* v. *Lucarz*, 430 F. 2d 1051, 1055 (9th Cir. 1970).

Moreover, the affidavit need not contain information providing certainty that the items sought will be found as a result of the search. It is only necessary that the facts and circumstances in the affidavit suffice to warrant a person of reasonable caution to believe that an offense

has been or is being committed and that evidence related to the crime will be found at the place to be searched. See *Brinegar* v. *United States*, 338 U.S. 160, 175-176 (1949).

Viewed in a common sense manner (*United States* v. *Ventresca*, 380 U.S. 102, 108 (1965)), the affidavit provided probable cause to believe that narcotics and evidence of the murder for hire scheme were concealed in petitioner's truck. Petitioner argues (Pet. 17) that it is unreasonable to conclude that one who possesses a small quantity of marijuana in his house will also keep marijuana and related paraphernalia in his automobile. But petitioner had recently been arrested for possession of a large quantity of heroin, and the police, while searching for Mrs. Kulik, had found a syringe, a false identification, and a semi-automatic rifle in petitioner's apartment. These facts indicated that petitioner was more than a casual user of marijuana, and provided reason to believe that he possessed additional quantities of illicit drugs. Moreover, the police were also searching for evidence relating to Bovan's murder. While evidence of these crimes might have been located elsewhere, petitioner's truck was a logical place to search for such evidence, especially since the truck was registered to him under an assumed name.

2. Petitioner contends (Pet. 19-20) that the heroin should have been suppressed as the fruit of an unlawful entry into his apartment to arrest his wife. This claim is disposed of by this Court's recent decision in *Payton* v. *New York*, No. 78-5420 (Apr. 15, 1980). In *Payton* the Court held that absent either consent or exigent circumstances, police must possess an arrest warrant before they may enter a suspect's home to effect an arrest. Here, the police officers acted under the authority of a warrant issued for the arrest of Elsie Kulik following her

indictment for conspiracy to commit murder. Petitioner does not deny that the arrest warrant was issued upon probable cause or that the police had reason to believe that Mrs. Kulik was within the apartment. See *Payton* v. *New York*, *supra*, slip op. 29. Accordingly, the entry into petitioner's residence was lawful under the Fourth Amendment and provides no basis for suppression of the heroin that was subsequently seized pursuant to the search warrant.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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